File With:
City Clerk
City of Ukiah
300 Seminary Avenue
Ukiah, CA 95482

CORRECTED**

CLAIM FOR MONEY OR DAMAGES AGAINST THE CITY OF UKIAH

RESERVE FOR FILING STAMP

CLAIM NO._____

CITY OF UKIAH Received SEP 9 2013 CITY CLERK DEPT

A claim must be presented, as prescribed by the Government Code of the State of California, by the claimant or a person acting on his/her behalf and shall show the following:

If additional space is needed to provide your information, please attach sheets, identifying the paragraph(s) being answered.

1. Name and Post Office address of the Claimant:

Name of Claimant: UKIAH VALLEY SANITATION DISTRICT

Post Office Address: See #2

2. Post Office address to which the person presenting the claim desires notices to be sent:

Name of Addressee: Duncan M. James, Attorney at Law Telephone: (707) 468-9271

Post Office Address: P.O. Box 1381
445 North State Street
Ukiah, CA 95482

3. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

Date of Occurrence: Continuously from 12/14/1966 to present Time of Occurrence: Continuously from 12/14/1966 to present.

Location: City Hall, Ukiah, California 95482

Circumstances giving rise to this claim: See Attachment 3.

4. General description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of the presentation of the claim.

See Attachment 3.

5. The name or names of the public employee or employees causing the injury, damage, or loss, if known.

Unknown

** Claim is being corrected to include complete attachment. Claim submitted on September 6, 2013, was missing Page 14 and 15 by inadvertent mistake.

6. **If amount claimed totals less than $10,000:** The amount claimed if it totals less than ten thousand dollars ($10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

Amount Claimed and basis for computation:

If amount claimed exceeds $10,000: If the amount claimed exceeds ten thousand dollars ($10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case. A limited civil case is one where the recovery sought, exclusive of attorney fees, interest and court costs does not exceed $25,000. An unlimited civil case is one in which the recovery sought is more than $25,000. (See CCP § 86.)

☐ Limited Civil Case ☒ Unlimited Civil Case

You are required to provide the information requested above, plus your signature on page 3 of this form, in order to comply with Government Code §910. In addition, in order to conduct a timely investigation and possible resolution of your claim, the city requests that you answer the following questions.

7. Claimant(s) Date(s) of Birth:

N/A

8. Name, address and telephone number of any witnesses to the occurrence or transaction which gave rise to the claim asserted:

All persons with knowledge are unknown to Claimant. Person known to have knowledge include, but are not limited to, the following: Gordon Elton, Jane Chambers, Ted Goforth, Richard Kennedy, Lyle Cash, Tim Eriksen, David Rapport, George Borecky, Robert Pedroncelli, Bill Baird, Candace Horsley, D. Kent Payne, Charles Rough, Kathy McKay, Roy Brosig, Al Kruth, Mike Harris, Charlie Stump, Sage Sangiacomo, and Larry DeKnoblough.

9. If the claim involves medical treatment for a claimed injury, please provide the name, address and telephone number of any doctors or hospitals providing treatment:

N/A

If applicable, please attach any medical bills or reports or similar documents supporting your claim.

10. If the claim relates to an automobile accident:

Claimant(s) Auto Ins. Co.: Telephone:

Address:

Insurance Policy No.:

Insurance Broker/Agent: Telephone:

Address:

Claimant's Veh. Lic. No.: Vehicle Make/Year:

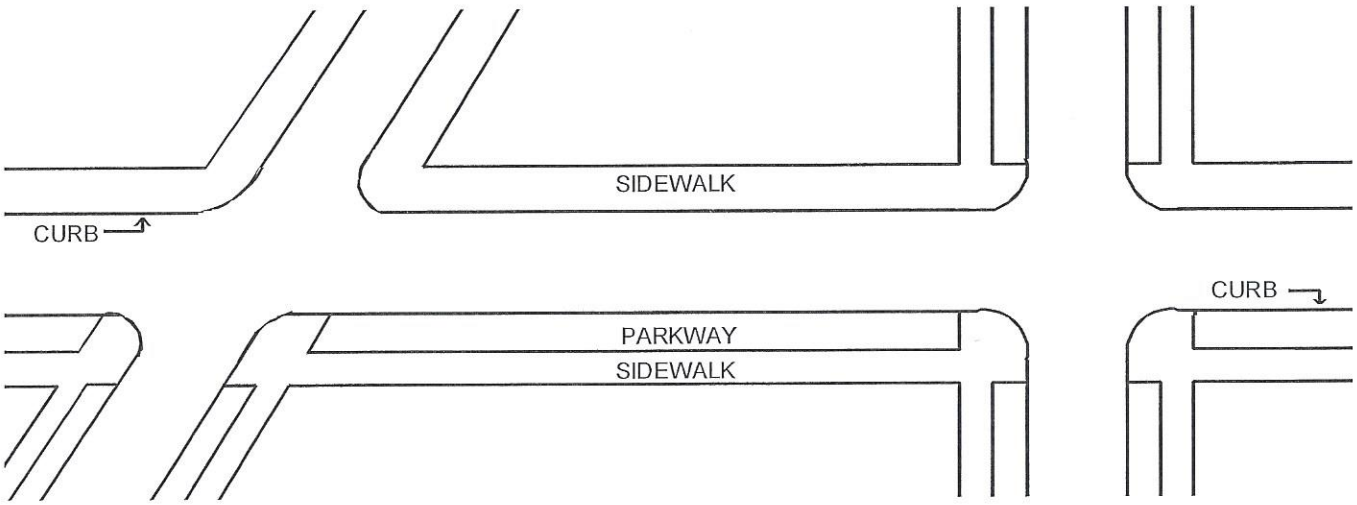
Claimant's Drivers Lic. No.: Expiration:

If applicable, please attach any repair bills, estimates or similar documents supporting your claim.

READ CAREFULLY

For all accident claims, place on following diagram name of streets, including North, East, South, and West; indicate place of accident by "X" and by showing house numbers or distances to street corners. If /Agency Vehicle was involved, designate by letter "A" location of /Agency Vehicle when you first saw it, and by "B" location of yourself or your vehicle when you first saw /Agency Vehicle; location of /Agency vehicle at time of accident by "A-1" and location of yourself or your vehicle at the time of the accident by "B-1" and the point of impact by "X."

NOTE: If diagrams below do not fit the situation, attach hereto a proper diagram signed by claimant.



Warning: Presentation of a false claim with the intent to defraud is a felony (Penal Code §72). Pursuant to CCP §1038, the /Agency may seek to recover all costs of defense in the event an action is filed which is later determined not to have been brought in good faith and with reasonable cause.

Signature: James Ronco Date: September 9, 2013

JAMES RONCO

Revised 12/2006

1955 AGREEMENT,
as amended in 1958

This claim is submitted to the City of Ukiah (hereinafter CITY) by the Ukiah Valley Sanitation District (hereinafter DISTRICT).

DISTRICT and CITY entered into various agreements and amendments, as further referenced herein, for the sharing of costs associated with the sewer system and waste water treatment.

At all times since CITY and DISTRICT entered into the agreements for the maintenance, expansion, and operation of the treatment plant and trunk sewer in 1955, up to and including the present, CITY has had the sole and exclusive responsibility to act as the paying and receiving agent for DISTRICT and to maintain the books and records of the sewer service units for both DISTRICT and CITY and to accurately calculate the correct CITY-DISTRICT ratio of equivalent sewer service units. The DISTRICT's day-to-day operations, including maintaining the DISTRICT'S books and records, was exclusively done by CITY employees.

At its inception, DISTRICT's Board of Directors had three appointed members two were Mendocino County Supervisors and one Ukiah City Council member (said Board of Directors hereinafter referred to as the "Dependent Board"). This arrangement continued until December, 2008, when an independently elected DISTRICT board (hereinafter referred to as the "Independent Board") replaced the DEPENDENT BOARD.

Even though numerous requests have been made of the CITY to permit DISTRICT the opportunity to inspect the books and records maintained by CITY as paying and receiving agent for DISTRICT and to provide the source documents establishing the method by which CITY calculated the equivalent sewer service units, CITY has failed and refused and continues to fail and refuse to provide any such information to DISTRICT and/or has indicated the materials were

lost or otherwise destroyed, even though CITY maintains said records in its fiduciary capacity and pursuant to the Agreements executed between the parties that are referred to herein. As a result of CITY's failure to permit DISTRICT open and unobstructed access to the books and records maintained by CITY of CITY-DISTRICT revenue and expenses and the supporting data upon which CITY calculates the sewer service units, DISTRICT has been damaged in an amount subject to proof.

Based on, *inter alia*, the allegations set forth herein, CITY owed DISTRICT a fiduciary duty.

On June 29, 1955, the CITY and DISTRICT entered into a written agreement (hereinafter "1955 AGREEMENT") that was amended twice in 1958, as well as in 1966 (hereinafter "1966 AGREEMENT") and 1985 (hereinafter "1985 AGREEMENT"). Paragraph 4 of the 1955 AGREEMENT provided:

> "Annual costs for treatment, including maintenance, expansion, and operation of the treatment plant and trunk sewer shall be apportioned between the CITY and the DISTRICT, based upon the proportionate number of sewage connections. Replacement and repair of said treatment plant shall be treated as maintenance and, not capital outlay, and the DISTRICT shall not be charged with costs of amortization of said treatment plant."

On October 20, 1958, the CITY and DISTRICT amended the 1955 AGREEMENT in part by adding:

1. Paragraph 16, which allowed the CITY to charge the DISTRICT 10% of the amount billed for billing and collection services; and,

2. Paragraph 17, which allowed the CITY to charge "the actual cost of any services provided by the City for which a specific fee is not set forth herein or provided for by separate agreement." (Emphasis added.)

1966 AGREEMENT

On December 14, 1966, the CITY and DISTRICT executed the 1966 AGREEMENT and amended paragraph 4 of the 1955 AGREEMENT and substituted the phrase "projected ratio of CITY-DISTRICT sewer connections for each year of operation from and after January 1, 1967 […]" (Emphasis added) for "proportionate number of sewer connections" (Emphasis added). As amended, paragraph 4 read in part as follows:

> "4. Annual costs for treatment, including maintenance, expansion, and operation of the treatment plant and trunk sewer shall be apportioned between the CITY and DISTRICT in each year based upon the projected ratio of CITY-DISTRICT sewer connections for each year of operation from and after January 1, 1967 as set forth in the projection prepared by Brown and Caldwell […]" (Emphasis added.)

The 1966 AGREEMENT added a second paragraph to paragraph 4, which states:

> "The parties agree to annually review the actual ratio of sewer connections as compared to the projection, and to adjust the cost apportionment whenever the actual ratio deviates by more than 10% from the projected ratio."

No annual review ever took place nor was there an annual adjustment to reflect the actual ratio when it deviated more than 10% from the projected ration, which it did.

Also added by the 1966 AGREEMENT to paragraph 4 was the following:

"Replacement and repair of said treatment plant shall not be treated as capital outlay, and the DISTRICT shall not be charged with amortization of said treatment plant."

The 1966 AGREEMENT amended paragraph 16 of the 1958 AGREEMENT and increased the amount DISTRICT would pay the CITY to "20% of the amounts billed for sewer service charges."

From 1958 until 1966, CITY allocated the costs and charged the DISTRICT based on the actual number of ESSU's. From 1967 through 1985, CITY charged the DISTRICT for its annual share of costs based on the "projected ratio," even though the 1966 AGREEMENT specifically required that CITY "annually review the actual ratio of sewer connections as compared to the projection, and to adjust the cost apportionment whenever the actual ratio deviates by more than 10% from the projected ratio." (Emphasis added.)

According to documents prepared by CITY, in 1966 the ratio billed DISTRICT was 23.23% which was the same as the actual number of sewer service units in the DISTRICT. In 1967 CITY billed DISTRICT on the projected percentage of 44.15% rather than the actual number of sewer service units in the DISTRICT which was 23.91%.

From 1968 through 1985, CITY billed DISTRICT based on the "projected ratio" rather than the "actual ratio, thereby resulting in an annual overcharge by the CITY to the DISTRICT. For example, by 1982 the "actual ratio" of ESSU'S in the DISTRICT was only 27.90% yet the CITY was still billing the district based on the "projected ratio" for the DISTRICT of 51.34%. The CITY continued to charge the DISTRICT on the basis of 51.34% through 1985.

As a result of the CITY'S failure to bill according to the terms of the 1966 AGREEMENT, the CITY breached the 1966 AGREEMENT and its fiduciary duty to the

DISTRICT. For the time period 1966 through 1985, DISTRICT has been damaged in an amount subject to proof but being in the approximate amount of $524,971.16 plus prejudgment interest.

1985 AGREEMENT

On February 6, 1985, the CITY and DISTRICT entered into the fourth amendment (1985 AGREEMENT) to the 1955 AGREEMENT. The 1985 AGREEMENT amended paragraph 4 of the 1955 AGREEMENT, as amended by the 1966 AGREEMENT, and deleted the reference to "projected ratio." As amended by the 1985 AGREEMENT, paragraph 4 read as follows:

> "4. Annual costs for treatment, including maintenance, operation, expansion, upgrading, administration, and financial services of the entire sewage system (treatment plant, trunk sewer, and collection system) shall be apportioned between the CITY and DISTRICT in each year based upon the ratio of CITY-DISTRICT sewer service units for each year of operation from and after July 1, 1985 […]."

The second paragraph of paragraph 4 goes on to state:

> "Cost apportionment between CITY and DISTRICT as described above shall be adjusted annually at the beginning of each fiscal year of operation based upon the ratio of CITY-DISTRICT equivalent sewer service units on record as of March 31 each year."

Paragraph 16 of the 1966 AGREEMENT was deleted by the 1985 AGREEMENT, thereby eliminating the CITY's authority to charge DISTRICT an additional sum for billing and collections services.

In addition to the CITY breaching the 1985 AGREEMENT and its fiduciary duty to the DISTRICT by overcharging the DISTRICT based on the ratio of CITY-DISTRICT equivalent

sewer service units, the CITY further breached the 1985 AGREEMENT and its fiduciary duty to the DISTRICT by charging the DISTRICT, in addition to the allocation of costs based on the ratio of CITY-DISTGRICT sewer service units, separately for expenses not expressly authorized by the contract, including but not limited operations and maintenance, administration and general expenses, interest, depreciation, general government services and billing and collections. As stated in the 1985 AGREEMENT, "Annual costs for treatment, including maintenance, operation, expansion, upgrading, administration, and financial services of the entire sewerage system (treatment plant, trunk sewer, and collection system) shall be apportioned between CITY and DISTRICT in each year based upon the ratio of CITY-DISTRICT sewer service units for each year of operation from an after July 1, 1985."

As a result of the CITY'S breach of the 1985 AGREEMENT and its fiduciary duty for the time period 1985 through 1995, DISTRICT has been damaged, in addition to the damages DISTRICT has suffered pursuant to the breach of the 1966 AMENDMENT, an approximate additional amount of $1,423,012.50, plus prejudgment interest.

PARTICIPATION AGREEMENT,
and amendments thereto

On June 10, 1995 the CITY and DISTRICT signed a written document entitled PARTICIPATION AGREEMENT. Paragraph 1 of said agreement provided:

> "The annual costs for treatment, including maintenance, operation, expansion, upgrading, administration, insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and collection system) shall be apportioned between the CITY and DISTRICT each year based upon the ratio of CITY to DISTRICT sewer service units for each year of operation." (Emphasis added.)

In addition, the PARTICIPATION AGREEMENT specified in part:

1. "CITY shall be the paying and receiving agent for all DISTRICT operation and maintenance funds" (Paragraph 1);
2. "Cost apportionment between CITY and DISTRICT […] shall be adjusted annually at the beginning of each fiscal year of operation based upon the ratio of CITY to DISTRICT equivalent sewer service units on record as of March 31 each year" (Paragraph 1, emphasis added);
3. DISTRICT and CITY "shall meet together at such times and places as they shall agree, but in any event at least once a year beginning with the effective date of this Agreement"(Paragraph 6);
4. "DISTRICT will establish such fees and charges as will be sufficient to reimburse CITY for its actual costs of issuance of permits and cost of inspection. CITY shall maintain full and complete accounting records on such services, which will allow the review of such charges not less than once each year so they may at all times reflect such actual costs" (Paragraph 12); and,
5. "CITY will maintain complete records and accounts relating to costs and expenditures made pursuant to or in connection with this Agreement, and of all sewer service revenues which it may have collected (Paragraph 13)."

On March 24, 1999, paragraph 1 of the PARTICIPATION AGREEMENT was amended (AMENDMENT #1), in part, by adding the phrases "repair and replacement" and "debt service" to the "annual costs" to "be apportioned between the CITY and DISTRICT each year based upon the ratio of CITY to DISTRICT sewer service units for each year of operation." AMENDMENT

#1 also amended paragraph 6 of the PARTICIPATION AGREEMENT, as set forth above, and provided in part as follows:

1. DISTRICT and CITY "shall meet together at least once a year, prior to the commencement of the fiscal year (July 1 - June 30) for, among other purposes, approval of the annual budget for the sewer system operations";
2. "CITY shall prepare the proposed budget for the sewer system which must receive approval from both the City Council and the Ukiah Valley Sanitation District Board of Directors." (Paragraph 6.1.)

On December 15, 2004, CITY and DISTRICT entered into a second written amendment (AMENDMENT #2) to the PARTICIPATION AGREEMENT which affirmed AMENDMENT # 1 in part as follows:

> "On July 19, 1995, the Parties entered an Amendment No. 1 to the Participation Agreement. That agreement affirms that the annual costs for the entire sewer system (treatment plant, trunk sewer and collection system of the City and the District), including maintenance, operation, administration, repair and replacement, upgrading, debt service, insurance and financial services are allocated between the City and the District based upon the ratio of City and District sewer service units for each year of operation." (Recital, paragraph 2.)

At the time CITY and DISTRICT executed AMENDMENT # 2, they planned to increase the capacity of the waste water treatment plant and upgrade and rehabilitate the sewer system.

AMENDMENT # 2 defined various terms as follows:

1. "Capacity Project" (hereinafter "CAPACITY PROJECT") as a "project to increase the capacity of the wastewater treatment plant to permit additional

new connections in both the DISTRICT and the CITY […]" (Recital, paragraph 7);

2. "Upgrade/Rehabilitation Project" (hereinafter "UPGRADE/ REHABILITATION PROJECT") as "a project to rehabilitate and upgrade the wastewater treatment plant" (Recital, paragraph 7);
3. The CAPACITY PROJECT and UPGRADE/REHABILITATION PROJECT are collectively defined as "the PROJECT" (Recital, paragraph 7); and,
4. "Increased Capacity" (hereinafter "INCREASED CAPACITY") as the "increase the wastewater treatment plant's capacity by an additional 2400 ESSU's […]" (Recital, paragraph 8).

The allocation of the sewer service units prior to the completion of the PROJECT and of INCREASED CAPACITY after project completion is noted in part as follows:

> "1.2 The Increased Capacity. The INCREASED CAPACITY shall be allocated as follows: 65% to the DISTRICT; 35% to the CITY. This allocation of INCREASED CAPACITY shall be subject to the same review and opportunity for adjustment as is provided for the allocation of CAPACITY PROJECT costs under Section 2.1 of this Agreement." (Paragraph 1.2, page 3; emphasis added.)

As to the allocation of costs for the CAPACITY PROJECT, AMENDMENT # 2 states as follows:

> "2. **Allocation of the Project Costs**. All of the costs of the PROJECT ("Project Costs"), including, but not limited to, planning, engineering, design, design review, administration, construction, legal and financing (including fees, financial

services, transaction costs and debt service) shall be allocated between the City and the District as follows" (Paragraph 2, page 3, Emphasis added):

2.1. The CAPACITY PROJECT. 35% of the PROJECT COSTS of the CAPACITY PROJECT shall be paid by the CITY and 65% of those PROJECT COSTS shall be paid by the DISTRICT. This allocation of CAPACITY PROJECT costs is based on an estimate of the number of new Sewer service units that will be needed in the CITY and in the DISTRICT through the year 2020. The allocation of these costs shall be reviewed annually by the Parties TO INSURE that the cost sharing reflects the ACTUAL PROPORTION of new connections in the CITY and the DISTRICT. Each year, commencing twelve months after the completion of the PROJECT, the Parties shall meet to conduct this review, taking into account the number of new service connections within each party during the previous twelve months, the total number of new connections within each party's jurisdiction since the Effective Date, the likely number of new connections in the next one, three and five year time periods, any changes in organization, including annexations or detachments; which may have occurred, and any other facts or conditions the Parties consider relevant. Based upon this review, the Parties may adjust the allocation of these costs between them." (Paragraph 2.1, page 3, emphasis added.)

Therefore, an annual review of the PROJECT COSTS for the CAPACITY PROJECT and INCREASED CAPACITY is required to insure that the cost sharing reflects the ACTUAL proportion of new connections in the City and the District.

The formula for calculating the PROJECT COSTS for the UPGRADE/REHABILITATION PROJECT are different than for the CAPACITY PROJECT and is based on the PARTICIPATION AGREEMENT. AMENDMENT # 2, section 2.2, provides as follows:

> "2.2. The Upgrade/Rehabilitation Project. The PROJECT COSTS of the UPGRADE/REHABILITATION PROJECT shall be allocated between the CITY and the DISTRICT based upon the ratio of CITY and DISTRICT ESSUs [Equivalent Sewer Serviced Units] for each year of operation, commencing in the year when PROJECT COSTS are first incurred, as provided in the PARTICIPATION AGREEMENT. Consistent with the PARTICIPATION AGREEMENT, these allocations shall be calculated each year at the same time and in the same manner as other costs allocated under Section 1 of the PARTICIPATION AGREEMENT." (Section 2.2, page 3. Emphasis added.)

The PARTICIPATION AGREEMENT does not allow CITY to charge DISTRICT separately for operations and maintenance expenses, administration and general expenses, interest, depreciation, general government services, billing and collections. As stated in the PARTICIPATION AGREEMENT, "The annual costs for treatment, including maintenance, operation, expansion, upgrading, administration, insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and collection system) shall be apportioned between the CITY and DISTRICT each year based upon the ratio of CITY to DISTRICT sewer service units for each year of operation." (Paragraph 1). Therefore, the CITY may only charge the DISTRICT "based upon the ratio of CITY to DISTRICT sewer service units for each year of operation."

The CITY has committed a material breach of the PARTICIPATION AGREEMENT, AMENDMENT # 1 and AMENDMENT # 2, and breached its fiduciary duty to DISTRICT by:

1. Charging the DISTRICT for operations and maintenance expenses, administration and general expenses, interest, depreciation, general government services, billing and collections, in addition to charging the DISTRICT for proportionate share of the annual costs for treatment, including maintenance, operation, expansion, upgrading, administration, insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and collection system) between the CITY and DISTRICT each year based upon the ratio of CITY to DISTRICT sewer service units for each year of operation;
2. Failing to conduct an annual review of the new sewer service units to insure that the cost sharing reflects the ACTUAL proportion of new connections in the CITY and DISTRICT, thereby resulting in a material breach of contract and fiduciary duty by the CITY, which resulted in the DISTRICT paying a substantially greater portion of the PROJECT COSTS for the CAPACITY PROJECT.
3. Failing to conduct an annual review of the sewer service units to insure that the cost sharing reflects the proportion of connections in the CITY and DISTRICT, thereby resulting in a material breach of contract and fiduciary duty by the CITY, which resulted in the DISTRICT paying a substantially greater portion of the PROJECT COSTS for the UPGRADE / REHABILITATION PROJECT

As a result of the CITY'S breach of the PARTICIPATION AGREEMENT, AMENDMENT # 1 and AMENDMENT # 2, and its fiduciary duty to DISTRICT for the time period 1995 through the present, DISTRICT has been damaged, in addition to the damages DISTRICT suffered pursuant to the 1966 AGREEMENT and 1985 AGREEMENT, an approximate additional amount of $6,886,979.78, exclusive of damages DISTRICT may have suffered as a result of any overcharge to the DISTRICT in relation to the PROJECT COSTS for the UPGRADE / REHABILITATION PROJECT, described above, in an amount subject to proof.

In addition, DISTRICT has suffered damages as a result of unaccounted for income for the time period of 2001 through 2011 in the amount of $6,341,101.00.

FINANCING AGREEMENT

On or about March 2, 2006, CITY and DISTRICT entered into a written agreement entitled "Financing Agreement" (hereinafter FINANCING AGREEMENT). The "Financing Agreement" was for a $72,000,000 bond to fund the increase in capacity and upgrade/and rehabilitation of the waste water treatment plant. Pursuant to the FINANCING AGREEMENT:

> "A portion of the Installment Payments shall be apportioned to the District under and in accordance with the procedures and methodology set forth in the Participation Agreement. Such portion is herein referred to as the "District Payments." (Section 1.)

Section 2 of the FINANCING AGREEMENT provides in relevant part:

> "The DISTRICT will fix, prescribe and revise rates, connection fees and other fees and charges for the services and facilities furnished by the DISTRICT'S

> portion of the Wastewater System […] All such revenues will be collected by the CITY in accordance with the PARTICIPATION AGREEMENT, and the CITY will apply such revenues to pay the DISTRICT Payments on behalf of the DISTRICT."

The CITY committed a material breach of the FINANCING AGREEMENT and breached its fiduciary duty to DISTRICT by:

1. Failing to apportion to the DISTRICT a portion of the Installment Payments in accordance with the procedures and methodology as set forth in the PARTICIPATION AGREEMENT;
2. Charging the DISTRICT for its share of the CAPACITY PROJECT at the rate of 65% rather than on the basis of the actual proportion of new connections in the CITY and DISTRICT; and,
3. Over-charging DISTRICT for its share of the Installment Payments for the UPGRADE/REHABILITATION PROJECT.

As a result of the CITY'S breach of the FINANCING AGREEMENT, and its fiduciary duty to DISTRICT, for the time period 2006 through the present, DISTRICT has been damaged an amount, in addition to the damages DISTRICT has suffered pursuant to the breach of the 1966 AGREEMENT AND 1985 AGREEMENT, and the PARTICIPATION AGREEMENT and AMENDMENT # 1 and AMENDMENT # 2, in the approximate amount of $1,340,677.00, plus prejudgment interest, exclusive of damages DISTRICT may have suffered as a result of any overcharge to the DISTRICT in relation to the PROJECT COSTS for the UPGRADE / REHABILITATION PROJECT, described above, in an amount subject to proof.

CONCLUSION

As a result of CITY'S breach of contract and breach of their fiduciary duty to DISTRICT, for the time period of 1967 through 2011, DISTRICT has been damaged in the approximate amount of $15,991,772.28, plus prejudgment interest, exclusive of damages DISTRICT may have suffered as a result of any overcharge to the DISTRICT in relation to the PROJECT COSTS for the UPGRADE / REHABILITATION PROJECT, described above.